

# Court of Appeals, State of Michigan

## ORDER

Darren Moore v Irene Unsleber

Docket No. 343699

LC No. 17-009199-NI

Michael J. Riordan  
Presiding Judge

Christopher M. Murray

Cynthia Diane Stephens  
Judges

---

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2) and in lieu of granting the application, the April 19, 2018, order of the Wayne Circuit Court denying summary disposition to defendant hereby is REVERSED. Considering the facts in a light most favorable to plaintiff, see *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999), the record before this Court demonstrates that defendant is not liable for the condition. Even if defendant was on notice of the condition and even if plaintiff was an invitee, the dispositive issue is whether the concrete upheaval in the driveway was an open and obvious condition. Our Supreme Court has ruled that “potholes in pavement are an ‘everyday occurrence’ that ordinarily should be observed by a reasonably prudent person.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523; 629 NW2d 384 (2001). Similarly, and as here, concrete upheavals are common conditions that reasonably prudent persons should observe. Plaintiff therefore should have been aware that the mulch bag could have been obscuring a common concrete upheaval. The fact that a mulch bag blew over the upheaval does not amount to a “special aspect” sufficient to impose liability here. A bag covering a concrete upheaval does not comprise a unique situation leading to an unreasonably high likelihood of harm. Plaintiff could have stepped around the bag and thereby could have avoided the upheaval. Further, the bag-covered upheaval did not pose the type of severe threat of injury that our Supreme Court envisioned in *Lugo*’s illustration of the deep, open, and unguarded pit. *Id.* at 518. This case is REMANDED for entry of an order of dismissal consistent with this order.

The motion for peremptory reversal is DENIED AS MOOT.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 26 2018

Date

  
Chief Clerk